

**State of California  
Office of Administrative Law**

**In re:**  
**Board of Equalization**

**NOTICE OF APPROVAL OF REGULATORY  
ACTION**

**Regulatory Action:**

**Government Code Section 11349.3**

**Title 18, California Code of Regulations**

**OAL File No. 2013-0617-02 S**


**Amend sections: 4601, 4603, 4604, 4605**

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This regulatory action provides that all notices issued under the Cigarette and Tobacco Products Licensing Act (Act) be served personally or by mail in the manner prescribed pursuant to Business and Professions Code section 22971.5. This action also amends three sections, one for retailers, one for wholesalers and distributors, and one for manufacturers and importers, to provide the Board with discretion to reduce a person's suspension for a violation of the Act to 5 days (currently the Board is limited to either 0, 10 or 20 days), when mitigating factors are present. This action also corrects cross-references within these amended sections.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 10/1/2013.

Date: 7/16/2013

  
George C. Shaw  
Senior Counsel

For: DEBRA M. CORNEZ  
Director

Original: Cynthia Bridges  
Copy: Richard Bennion

RECEIVED

JUL 18 2013

Board Proceedings

**OFFICE OF ADMINISTRATIVE LAW**

300 Capitol Mall, Suite 1250  
Sacramento, CA 95814  
(916) 323-6225 FAX (916) 323-6826



DEBRA M. CORNEZ  
Director

**MEMORANDUM**

TO: Richard Bennion  
FROM: OAL Front Desk LW  
DATE: 7/17/2013  
RE: Return of Approved Rulemaking Materials  
OAL File No. 2013-0617-02S

OAL hereby returns this file your agency submitted for our review (OAL File No. 2013-0617-02S regarding Service of a Notice of Violation or Warning Notice).

If this is an approved file, it contains a copy of the regulation(s) stamped "ENDORSED APPROVED" by the Office of Administrative Law and "ENDORSED FILED" by the Secretary of State. The effective date of an approved regulation is specified on the Form 400 (see item B.5). **Beginning January 1, 2013**, unless an exemption applies, Government Code section 11343.4 states the effective date of an approved regulation is determined by the date the regulation is filed with the Secretary of State (see the date the Form 400 was stamped "ENDORSED FILED" by the Secretary of State) as follows:

- (1) **January 1** if the regulation or order of repeal is filed on September 1 to November 30, inclusive.
- (2) **April 1** if the regulation or order of repeal is filed on December 1 to February 29, inclusive.
- (3) **July 1** if the regulation or order of repeal is filed on March 1 to May 31, inclusive.
- (4) **October 1** if the regulation or order of repeal is filed on June 1 to August 31, inclusive.

If an exemption applies concerning the effective date of the regulation approved in this file, then it will be specified on the Form 400. The Notice of Approval that OAL sends to the state agency will contain the effective date of the regulation. The history note that will appear at the end of the regulation section in the California Code of Regulations will also include the regulation's effective date. Additionally, the effective date of the regulation will be noted on OAL's Web site once OAL posts the Internet Web site link to the full text of the regulation that is received from the state agency. (Gov. Code, secs. 11343 and 11344.)

**Please note this new requirement:** Government Code section 11343 now requires:

1. Section 11343(c)(1): Within 15 days of OAL filing a state agency's regulation with the Secretary of State, the state agency is required to post the regulation on its Internet Web site in an easily marked and identifiable location. The state agency shall keep the regulation posted on its Internet Web site for at least six months from the date the regulation is filed with the Secretary of State.
2. Section 11343(c)(2): Within five (5) days of posting its regulation on its Internet Web site, the state agency shall send to OAL the Internet Web site link of each regulation that the agency posts on its Internet Web site pursuant to section 11343(c)(1).

OAL has established an email address for state agencies to send the Internet Web site link to for each regulation the agency posts. Please send the Internet Web site link for each regulation posted to OAL at **[postedregslink@oal.ca.gov](mailto:postedregslink@oal.ca.gov)**.

**DO NOT DISCARD OR DESTROY THIS FILE**

Due to its legal significance, you are required by law to preserve this rulemaking record. Government Code section 11347.3(d) requires that this record be available to the public and to the courts for possible later review. Government Code section 11347.3(e) further provides that “....no item contained in the file shall be removed, altered, or destroyed or otherwise disposed of.” See also the Records Management Act (Government Code section 14740 et seq.) and the State Administrative Manual (SAM) section 1600 et seq.) regarding retention of your records.

If you decide not to keep the rulemaking records at your agency/office or at the State Records Center, you may transmit it to the State Archives with instructions that the Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in the file. See Government Code section 11347.3(f).

Enclosures

## NOTICE PUBLICATION/REGULATION SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-</b>	REGULATORY ACTION NUMBER <b>2013-0617-025</b>	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY State Board of Equalization			AGENCY FILE NUMBER (if any)

APPROVED FILED  
OFFICE OF

2013 JUL 16 PM 3:42

2013 JUN 17 P 1:56  
OFFICE OF  
ADMINISTRATIVE LAW*Don Brown*  
ADMINISTRATIVE LAW**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) Service of a Notice of Violation or Warning Notice		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT	
		AMEND	
		4601, 4603, 4604, 4605	
TITLE(S) 18		REPEAL	
3. TYPE OF FILING			
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____ <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only			
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input checked="" type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) <input type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____			
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____			
7. CONTACT PERSON Richard E. Bennion		TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984
		E-MAIL ADDRESS (Optional) rbennion@boe.ca.gov	

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Joann Richmond</i>	DATE June 17, 2013
TYPED NAME AND TITLE OF SIGNATORY Joann Richmond, Chief, Board Proceedings Division	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JUL 16 2013

Office of Administrative Law

**Final Text of Proposed Amendments to  
California Code of Regulations, Title 18, Sections  
4601, *Service of a Notice of Violation or Warning Notice*,  
4603, *Penalties for Licensed or Unlicensed Retailers*,  
4604, *Penalties for Licensed or Unlicensed Wholesalers and Distributors*, and  
4605, *Penalties for Licensed or Unlicensed Manufacturers and Importers***

**4601. Service of a Notice of Violation or Warning Notice.**

~~Any notice issued under the Cigarette and Tobacco Products Licensing Act may be served personally or by mail in the manner prescribed for service of a notice under Business and Professions Code section 22971.5. The Notice of Violation or Warning Notice shall be placed in a sealed envelope, with postage paid, addressed to the licensee or unlicensed person at his or her last known address as it appears in the records of the Board. The giving of notice shall be deemed complete at the time of deposit of the notice at a United States Post Office, a mailbox, sub-post office, substation, mail chute, or other facility regularly maintained or provided by the United States Postal Service, without extension of time for any reason. In lieu of mailing, a Notice of Violation may be served personally by delivery to the person to be served and service shall be deemed complete at the time of such delivery. Personal delivery to a corporation may be made by delivery of a notice to any person designated to be served for the corporation with summons and complaint in a civil action, pursuant to the Code of Civil Procedure.~~

Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections ~~22971.5~~22974.7, 22978.7 and 22979.7, Business and Professions Code.

**4603. Penalties for Licensed or Unlicensed Retailers.**

The following penalties shall be assessed in addition to any other civil or criminal penalty provided by law upon a finding that a retailer has violated any provision of the Act:

(a) A first offense of a violation of any of the following provisions shall result in the issuance of a Warning Notice to the licensee or unlicensed person:

- (1) Business and Professions Code section 22974 (retailer's failure to retain purchase invoices).
- (2) Business and Professions Code section 22980.1, subdivision (c), (d) or (e) (purchase from unlicensed person or person with suspended or revoked license).
- (3) Business and Professions Code section 22980.1, subdivision (g) (purchase of cigarettes to which a stamp may not be affixed in accordance with Rev. & Tax. Code, § 30163, subd. (b)).

(4) Business and Professions Code section 22980.2, subdivision (a) (sales of cigarettes or tobacco products by an unlicensed person or person with suspended or revoked license).

(b) A first offense of a violation of any of the following provisions shall result in the issuance of a 20-day suspension:

(1) Business and Professions Code section 22973, subdivision (a)(5) (retailer's false statement on application).

(2) Business and Professions Code section 22980, subdivision (b) (any person's refusal to allow inspection).

(c) A second or subsequent offense for a violation of the provisions listed in subdivision (a) or (b) above, shall result in both a 30-day suspension or revocation and a fine. The fine shall be determined in accordance with Regulation 4607.

(d) A violation of Business and Profession Code section 22974.3 (possession of unstamped cigarettes or untaxed tobacco products) shall result in the following:

(1) Notwithstanding paragraphs (2) and (3) below, a Warning Notice for a first offense when the licensee has been in business for less than one month and there has been no purchase of new cigarette or tobacco product inventory during that period.

(2) A 10-day suspension for a first offense for a seizure of less than 20 packages of cigarettes, or the equivalent amount of tobacco products based on wholesale cost.

(3) A 20-day suspension for a first offense for a seizure of 20 packages of cigarettes or more, or the equivalent amount of tobacco products based on wholesale cost.

(4) Both a 30-day suspension or revocation and a fine for a second or subsequent offense. The fine shall be determined in accordance with Regulation 4607.

(e) In cases involving multiple violations, the violation punishable by the most severe penalty will be used for purposes of determining the penalty assessed.

(f) Notwithstanding subdivisions (b) through (e) above, a reduction in the length of a suspension period may be warranted if mitigating circumstances are present, as set forth in Regulation 4606. If any suspension period is reduced, the redetermined period of suspension shall be 0 days, 5 days, 10 days, or 20 days. The existence of mitigating circumstances may also warrant reducing a revocation penalty to a 30-day suspension, unless revocation is mandated pursuant to Business and Professions Code section 22974.3, subdivision (a)(2) or subdivision (a)(4), 22974.4, 22978.6, or 22980.3, subdivision (a)(2) or subdivision (d).

Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22973(a)(5), 22974, 22974.3, 22974.4, 22974.7, 22980.1(c), (d), (e) and (g), 22980(b), 22980.2(a) and 22980.3(a)(2) and (d), Business and Professions Code.

#### **4604. Penalties for Licensed or Unlicensed Wholesalers and Distributors.**

The following penalties shall be assessed in addition to any other civil or criminal penalty provided by law upon a finding that a wholesaler or distributor has violated any provision of the Act:

(a) A first offense of a violation of any of the following provisions will result in the issuance of a Warning Notice to the licensee or unlicensed person:

- (1) Business and Professions Code section 22978.1 (distributor's or wholesaler's failure to retain purchase invoices).
- (2) Business and Professions Code section 22978.4, subdivision (c) (distributor's or wholesaler's failure to comply with invoice requirements).
- (3) Business and Professions Code section 22978.5~~2~~, subdivision (b) (distributor's or wholesaler's failure to retain sales records).
- (4) Business and Professions Code section 22980.1, subdivision (b), (c), (d), (e) (sales to or purchases from unlicensed person or person with suspended or revoked license) or (f) (sales of cigarettes or tobacco products to retailer or wholesaler revoked or suspended until debts are clear).
- (5) Business and Professions Code section 22980.2, subdivision (a) (sales of cigarettes or tobacco products by unlicensed person or person with suspended or revoked license).

(b) A first offense of a violation of any of the following provisions will result in the issuance of a 20-day suspension:

- (1) Business and Professions Code section 22977, subdivision (a)(5) (distributor's or wholesaler's false statement on application).
- (2) Business and Professions Code section 22980, subdivision (b) (any person's refusal to allow inspection).
- (3) Business and Professions Code section 22980.1, subdivision (g) (purchase of cigarettes to which a stamp may not be affixed in accordance with Rev. & Tax. Code, § 30163, subd. (b)).

(c) A second or subsequent offense for a violation of the provisions listed in subdivision (a) or (b) above shall result in both a 30-day suspension or revocation, and a fine. The fine shall be determined in accordance with Regulation 4607.

(d) A violation of Business and Profession Code section 22978.2 (possession of counterfeit stamped cigarettes by distributors, unstamped cigarettes by wholesalers or untaxed tobacco products) shall result in the following:

(1) Notwithstanding paragraphs (2) and (3) below, a Warning Notice for a first offense when the licensee or unlicensed person has been in business for less than one month and there has been no purchase of new cigarette or tobacco product inventory during the month.

(2) A 10-day suspension for a first offense for a seizure of less than 20 packages of cigarettes, or the equivalent amount of tobacco products based on wholesale cost.

(3) A 20-day suspension for a first offense for a seizure of 20 packages of cigarettes or more, or the equivalent amount of tobacco products based on wholesale cost.

(4) Both a 30-day suspension or revocation and a fine for a second or subsequent offense. The fine will be determined in accordance with section 4607.

(e) In cases involving multiple violations, the violation punishable by the most severe penalty will be used for purposes of determining the penalty assessed.

(f) Notwithstanding subdivisions (b) through (e) above, a reduction in the length of a suspension period may be warranted if mitigating circumstances are present, as set forth in Regulation 4606. If any suspension period is reduced, the redetermined period of suspension shall be 0 days, 5 days, 10 days, or 20 days. The existence of mitigating circumstances may also warrant reducing a revocation penalty to a 30-day suspension, unless revocation is mandated pursuant to Business and Professions Code section ~~22974.4~~22978.2, subdivision (a)(2) or subdivision (a)(4), 22978.6, or 22980.3, subdivision (a)(2) or subdivision (d).

Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22974.7, 22977(a)(5), 22978.1, 22978.2, ~~22978.7~~, 22978.5(b), 22978.7, 22979.7, 22980(b), 22980.1(b), (c), (d), (e), (f) and (g), ~~and 22980.2(a) and 22980.3(a)(2) and (d)~~, Business and Professions Code.

#### **4605. Penalties for Licensed or Unlicensed Manufacturers and Importers.**

The following penalties shall be assessed in addition to any other civil or criminal penalty provided by law upon a finding that a manufacturer or importer has violated any provision of the Act:



(a) A first offense of a violation of any of the following provisions will result in the issuance of a Warning Notice to the licensee or unlicensed person:

- (1) Business and Professions Code section 22979.4 (importer's failure to retain purchase invoices on premises).
- (2) Business and Professions Code section 22979, subdivision (b)(1) (participating manufacturer's false statement on certification to the Board).
- (3) Business and Professions Code section 22979.5, subdivision (b) (manufacturer's or importer's failure to retain sales records on premises).
- (4) Business and Professions Code section 22980.1, subdivision (a), (e) or (f) (purchases or sales from or to an unlicensed person or person with suspended or revoked license).
- (5) Business and Professions Code section 22980.2, subdivision (a) (sales of cigarettes or tobacco products by unlicensed person or person with suspended or revoked license).
- (6) Business and Professions Code section 22979.6, subdivision (c) (manufacturer's or importer's failure to comply with invoice requirements).

(b) A first offense of a violation of Business and Professions Code section 22980.1, subdivision (g) (purchase of cigarettes to which a stamp may not be affixed in accordance with Rev. & Tax. Code, § 30163, subd. (b)) shall result in a 20-day suspension.

(c) A second or subsequent offense for a violation of the provisions listed in subdivision (a) or (b) above shall result in both a 30-day suspension or revocation and a fine.

(d) In cases involving multiple violations, the violation punishable by the most severe penalty will be used for purposes of determining the penalty assessed.

(e) Notwithstanding subdivisions (b) through (d) above, a reduction in the length of a suspension period may be warranted if mitigating circumstances are present, as set forth in Regulation 4606. If any suspension period is reduced, the redetermined period of suspension shall be 0 days, 5 days, 10 days, or 20 days. The existence of mitigating circumstances may also warrant reducing a revocation penalty to a 30-day suspension, unless revocation is mandated pursuant to Business and Professions Code section 22974.4, 22978.6, or 22980.3, subdivision (a)(2) or subdivision (d).

Note: Authority cited: Section 22971.2, Business and Professions Code. Reference: Sections 22974.7, 22978.7, 22979.4, 22979(b)(1), 22979.4, 22979.5(b), 22979.6(c), 22979.7, 22980.1(a), (e) and (f), 22980.2(a), and 22980.3(a)(2) and (d)~~22979.6(e)~~, Business and Professions Code.